

**REMARKS**

Claims 1-15 and 19-21 were previously pending in the application. Of these Claims, Claims 7-9 stand withdrawn, and by this Amendment, Claims 3 and 15 are canceled without prejudice. Claims 1, 2, 4-6, 10-14 and 19-21 remain as previously submitted.

Claim 3 is objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. In response, claim 3 has been canceled.

Claim 15 is rejected under 35 U.S.C. 112 second paragraph as indefinite, in that claim 15 positively recites the side walls of the cold goods container. The Examiner regards this recitation as inconsistent with independent claim 1 which is directed toward the guide assembly *per se*. In response, claim 15 has been canceled.

The Claims stand rejected under the cited prior art of record. Specifically, Claims 1-5, 10-15 and 19-21 are rejected under 35 USC §102(b) as being anticipated by DE 298 17 743 (DE '743). Claim 6 is rejected under 35 USC §103(a) as being unpatentable over DE '743 in view of USP 6,641,239 (Kaiser).

With regard to the anticipation rejection of remaining claims 1, 2, 4, 5, 10-14 and 19-21, Applicants request reconsideration for the following reasons.

The Examiner contends that the DE '743 patent discloses a plurality of compensating elements 34-37 for mounting at least one guide rail of each of the pair of guide rails to one of the side walls at an acute angle to the side wall, the angle being defined so as to extend the rails parallel to one another. The Examiner further regards the compensating elements on the respective guide rails as mirror-symmetrical to each other.

In fact, elements 34-37 comprise hooks punched from the centerpiece of the rails which enable attachment of the rails to the side walls of the cooling apparatus. These hooks or attachment elements are not configured to mount the respective guide rails at an acute angle relative to the side wall. While the guide rail may in fact be installed at a slightly acute angle relative to the top wall of the cold goods container 11, there is nothing in the '743 patent to suggest that there is any compensating element that is configured to mount the guide rail at an acute angle relative to the side wall. Further in this regard, the Examiner will appreciate that Figure 4 is an exploded assembly drawing which merely exaggerates the final acute angle at which the guide rail assumes relative to the top wall or cap of the cold good container as shown in Figure 1.

In the instant application, the compensating elements take two forms. In Figure 3, the compensating element is reflected in the design of channel 20, in that the lateral depth of the channel increases over the length of the guide rail to compensate for the divergence of the side walls 8 of the cold goods container 3. In a second embodiment shown in Figure 6, the compensating element is provided in the form of a local projection 25 formed solely in the region of the end 22 near the door, creating an offset as between the fastening hooks 23 and 24, thus providing the acute angle referred to in independent claim 1.

It is respectfully submitted that there is no disclosure or even remote suggestion of any such compensating element in the DE '743 patent that would enable mounting of at least one of the guide rails at an acute angle relative to a side wall of the cold goods container, and the Examiner has proffered no factual evidence to the contrary. In fact, the DE '743 patent neither recognizes nor solves the problem of the need to make the guide rails parallel to each other when mounted on divergent side walls.

Dependent claims 2, 4, 5 and 10-14 are patentable by reason of their dependence upon independent claim 1. Further in this regard, to the extent that the dependent claims refer to a "compensating element" as defined in independent claim 1, it is clear that the subject matter of the dependent claims is neither disclosed nor suggested in the applied prior art for the reasons presented above in connection with claim 1.

With regard to independent claim 19, that claim requires a compensating element mounting at least one guide rail of each of the pair of guide rails at one end of the side walls, at an acute angle to the side walls, the angle being defined to extend the rails and the pair of guide rails parallel to each other. Note also that the claim positively requires that the side walls of the container diverge.

Here again, there is nothing in DE '743 that discloses or suggests compensating elements that allow the guide rails to be mounted at an acute angle relative to diverging side walls such that the guide rails themselves are parallel to one another. Accordingly, the subject matter of independent claim 19 as well as the subject matter of dependent claims 20 and 21 is not anticipated by DE '743.

With regard to the obviousness ground of rejection applied against dependent claim 6, the Examiner relies upon Kaiser for teaching a compensating element having a wedge shape, apparently referring to the sloping plane 57 within the guide profile as shown in Figure 6. However, the sloping plane 57 does not serve to orient the roller 65 at an acute angle relative to the side wall 16. As explained in the paragraph bridging columns 8 and 9 of Kaiser:

If the storage compartment is moved from its open position (see Fig. 1) in which the section 71 engages with its external toothed configuration 71.1 in the mating toothed configuration 54 ) and then into the cooling chamber 14, the section 71 is pushed by the

sloping plane 57 at the end of the insertion path out of engagement of the mating toothed configuration 54 by the sloping plane 57 that is disposed on the guide profile 50 that faces the section 71. As a result, an oblique position of the storage compartment 58 is corrected by the disengagement (the oblique position possibly arising because an improper procedure of inserting the storage compartment 58. Thus, the magnetic seal 27 of the door 26 provided at the front end of the storage compartment 58 seemingly rests all sides against the opening edge of the cooling chamber 14.

In other words, the sloping plane 57 serves to realign the storage compartment 58 from a misaligned position. Moreover, and in light of the Examiner's position that the compensating elements in the '743 patent are the attachment tabs 34-37, clearly it would not have been obvious to substitute the sloping plane configuration of Kaiser for the attachment tabs of the '743 patent since they are wholly unrelated in both structure and function.

For these and other reasons, the DE '743 patent does not disclose the subject matter defined by either of independent Claims 1 and 19. Therefore, Claims 1 and 19 are allowable, and dependent Claims 2, 5, 10-14, 20 and 21 are allowable for the same reasons, and also in light of the additional subject matter recited therein. In addition, the DE '743 patent and Kaiser, either alone or in combination, do not teach or suggest the subject matter defined by dependent Claim 6 (or claim 1 from which claim 6 depends). Therefore, Claim 6 is also allowable.

**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 1, 2, 4-6, 10-14 and 19-21 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

/James E. Howard/

James E. Howard  
Registration No. 39,715  
June 15, 2009

BSH Home Appliances Corporation  
100 Bosch Blvd.  
New Bern, NC 28562  
Phone: 252-639-7644  
Fax: 714-845-2807  
james.howard@bshg.com